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C O N F I D E N T I A L SECTION 01 OF 02 BEIJING 003462

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TAGS: [CM](#) [ECON](#) [EIND](#) [PGOV](#)
SUBJECT: ARREST OF MOFCOM OFFICIAL GUO JINGYI

REF: A. BEIJING 03339
[1](#)B. BEIJING 03363

Classified By: MINISTER-COUNSELOR ROB LUKE, REASONS 1.4(B AND D)

[1](#)1. (C) SUMMARY: A Chinese publication reported on August 29 that a key official in the Ministry of Commerce has been detained and is charged with taking bribes. The official, Director-General Guo Jingyi played a key role in the drafting of many if not most of China's foreign investment related regulations over the past decade. He was also expected to serve as China's lead negotiator in U.S.-China Bilateral Investment Treaty talks this week in Beijing, before he was suddenly removed from his position. Shock and speculation abound among Guo's colleagues at MOFCOM. It remains unclear whether the scandal will broaden or goes beyond a simple case of one official's corruption. END SUMMARY.

[1](#)2. (C) China's finance journal Caijing reported on Friday, August 29, that Guo Jingyi, a director-general ranked Inspector in the Ministry of Commerce (MOFCOM) Division of Treaties and Law, had been detained and is facing charges of bribery. Guo had been China's lead in a U.S.-China dialogue on a bilateral investment treaty (BIT) and was expected to lead China's delegation in U.S.-China BIT talks this month. Chinese press reports state that, acting on a tip from "higher authorities," the Party Discipline Committee and the Ministry of Supervision interviewed Guo on August 13. Guo was subsequently arrested only days before the scheduled start of U.S.-China BIT negotiations in Beijing September 2. The Party Central Discipline Committee and the Supreme People's Procuratorate reportedly are handling Guo's case.

[1](#)3. (C) During his 22 years of service at MOFCOM, Guo participated in many phases of China's reform process, and was involved in the writing of many laws and regulations. Those at MOFCOM and others who worked closely with Guo expressed shock, with most expressing high regard for Guo's knowledge and ability in drafting and implementing investment regulations.

[1](#)4. (C) The initial report and others that followed in a wide variety of local and overseas publications and websites suggested that the case involved bribery in a foreign-related merger handled by a Beijing law firm. On September 4, however, new reports in Finance Magazine asserted that bribes may have been passed to Guo in the course of his participation in the drafting and interpreting of foreign investment laws, and these reports specifically cited the 2006 M&A rules as having created "loopholes" for foreign acquisitions. COMMENT: The drafting of the 2006 regulations was a process that included public comment and many offices, and cannot be characterized as a "black box" process that a single individual could control. Others familiar with Guo's responsibilities expressed skepticism that the charges could

be based on a vague allegations of influencing the drafting of laws; they instead believe a specific case of bribery regarding a foreign acquisition or investment is more likely behind the charges. END COMMENT.

15. (C) Guo previously served as the deputy director of MOFCOM's Anti-Monopoly Office and was involved in the drafting of the foreign mergers and acquisitions rules (AML). He was previously quoted in the press as cautioning against the overzealous implementation of a national economic security screening system. COMMENT: The 2006 rules on the review of foreign M&A were drafted without input from the National Development and Reform Commission (NDRC), but based on recent ministerial planning documents released in August 2008, the NDRC secured a joint role with MOFCOM in the national security review process of foreign mergers. Some of our interlocutors who worked with Guo have speculated that bureaucratic competition between MOFCOM and NDRC may have something to do with Guo's investigation. At least one lawyer who works for a development bank and worked closely with Guo noted that Guo had been an early and key advocate for MOFCOM taking lead on the M and A regulatory process. He noted that Guo had personally convinced a very reluctant Vice Minister Ma Xihong that MOFCOM should move forward aggressively to draft the M and A regulations. While speculation that Guo's arrest is solely due to interagency rivalry is likely exaggerated, it could have played a part in the decision to charge Guo in such a high-profile manner. END COMMENT.

16. (SBU) Press reports on the case also suggest that, as a result of this matter, China will likely accelerate the

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establishment of a dual review system concerning foreign mergers and acquisitions, including both an anti-trust review and a national security review. MOFCOM's web site for the newly-created Anti-Monopoly Bureau became operational on September 1 (see <http://fldj.mofcom.gov.cn/>).

Alleged Co-conspirators

17. (C) Several law firms have also been implicated in the case, including Beijing Sifeng Law Office, which specializes in foreign investment and has a list of multinational clients. In this firm at least two lawyers are under investigation. These include Zhang Yudong, and a former MOFCOM Treaties and Law staff member, Liu Yang. Liu, a UC-Berkeley graduate, set up a separate firm - Shanxin Law Office - in March of 2008. In a report on the case China's 21st Century Economic Report said that the case involves bribery in a foreign-related merger and acquisition deal during Liu Yang's time at the Beijing Sifeng Law Office. The same report stated that the investigation is also being conducted at an unspecified provincial location.

China's BIT Negotiation Adds Commentary

18. (C) BIT negotiations during held September 2-5 in Beijing provided an opportunity for Econoffs to probe MOFCOM officials about the Guo case. All asserted a lack of information about the case. However, several who worked closely with Guo insisted that the severity of the allegations suggest Guo is not facing some kind of political retribution or has not simply fallen out of favor, but that he must have received significant bribes or, as is a common practice, a piece of real estate in return for some service. The officials, however, said that the obvious severity of the case means only the highest levels of leadership - likely nobody below a minister or vice minister - would have any direct knowledge of the case.

19. (C) MOFCOM officials noted that the allegations were not based on any previously public rumor. The government's decision to suddenly take this case public (such cases are not usually accidentally leaked to Chinese media sources),

say officials, indicates that a decision was made to make an example out of Guo. Noting the slow progress made in the BIT negotiations with the U.S. this week, at least one key MOFCOM official suggested that negotiators are nervous about everything they are doing as no one knows what Guo did wrong and they are afraid that others working on the same issues as Guo may come under attack.

¶10. (C) COMMENT: At this point, Embassy has little information beyond what has been reported in the press. None of our interlocutors at MOFCOM, among the local law community or foreign law community have any information beyond the press reporting. Speculation is rampant however, with some suggesting inter-agency rivalry and others suggesting that the scandal will widen to ensnare more senior officials to whom Guo is close. He reportedly has had a close working relationship with MOFCOM Vice Minister Ma Xiuhong, and at least one rumor suggests one of the private sector lawyers under investigation is even closer to VM Ma. Ma herself is one of the U.S.'s key interlocutors on many U.S.-China trade and investment issues and Ma was a long-time close subordinate of former Vice Premier Wu Yi.

¶11. (C) Nevertheless, Embassy at this point has no information that would substantiate rumors that the case goes beyond Guo and the other two lawyers who were his friends. Guo's removal, however, is in itself a negative for U.S. interests as Guo was a sophisticated and knowledgeable lawyer on many of the issues on which we engage MOFCOM. At a minimum, Guo's sudden removal will slow BIT talks if for no other reason than Guo's replacement must be brought up to speed and was not a participant in the last 18 months of U.S.-China preliminary discussions on the BIT.
RANDT